IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8011 of 1998
WITH
SPECIAL CIVIL APPLICATION No 8012 of 1998
WITH
SPECIAL CIVIL APPLICATION No 7239 of 1998
WITH
SPECIAL CIVIL APPLICATION No 3331 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI Sd/-
and
Hon'ble MR.JUSTICE D.A.MEHTA Sd/-

==========

1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PATEL VAKTABHAI PUNJABHAI
Versus
STATE OF GUJARAT

Appearance:
1. Special Civil Applications No. 8011, 8012 & 7239 of 1998
MR NIRUPAM NANAVATY, SENIOR ADVOCATE,
FOR NANAVATY ADVOCATES for the Petitioners
MR SN SHELAT, ADDL. ADVOCATE GENERAL
WITH MISS. MANISHA LAVKUMAR, AGP.
for Respondent Nos. 1 & 2
MR SN SHELAT, SENIOR COUNSEL WITH

MR NV ANJARIA for Respondent No. 3
MR DN PATEL for Respondent No. 4

2. Special Civil Application No 3331 of 1999
MR KM PATEL for the Petitioners.
MR SN SHELAT, ADDL.ADVOCATE GENERAL WITH
MISS.MANISHA LAVKUMAR, AGP. for Respondents
No. 1, 3 and 4
MR. DN PATEL, ADVOCATE for Respondent No.2.
MR SN SHELAT, SENIOR COUNSEL WITH
MR NV ANJARIA for Respondent No.5.

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE D.A.MEHTA

Date of decision: 20/10/2000

ORAL JUDGEMENT

(Per : MR.JUSTICE R.K.ABICHANDANI)

#. In this group of petitions the petitioners have challenged the constitutional validity of the provisions of the Panchayats (Extension to the Scheduled Areas) Act,1996 (hereinafter referred to as the said Act for short), enacted by the Parliament on 24.12.1996 under Article 243-M(4)(b) of the Constitution of India which empowers the Parliament to extend the provisions of part IX of the Constitution to the Scheduled Areas and the tribal areas subject to such exceptions and modifications as may be specified in such law. The challenge is on the ground that the provisions of the said Act violate the fundamental rights guaranteed by Article 14 of the Constitution of India, and are ultravires Article 243-D of the Constitution. A declaration is also sought that the provisions of the Gujarat Panchayats (Amendment) Act,1998, enacted by the State Legislature for amending the provisions of the Gujarat Panchayats Act,1993 as a corollary to the said Act, so that the provisions of the Gujarat Panchayats Act,1993 applied to the Scheduled Areas of the State subject to modification and the amendment indicated in Schedules 4 and 5 of the said Amendment Act, are ultravires to Articles 14 and 243-D of the Constitution. A further declaration is sought that the Presidential Order declaring the concerned areas as Scheduled Areas is illegal, arbitrary and discriminatory. Finally, the notification issued by the Collector regarding elections to the reserved seats is also challenged. The reliefs sought in Special Civil

Application Nos.8011/98, 8012/98 and 7239/98 are almost identical. In Special Civil Application No. 7239/98, there is one additional prayer challenging the statutory provisions and notification reserving the office of Sarpanch for the Scheduled Tribes.

1.1 Special Civil Application No. 3331 of 1999 also raises similar issues and challenges the provisions of section 4(g) of the Said Act and Sections 2, 4 and 8 of the Said State Amendment Act of 1998, as also Sections 9(5) and 278A of the Gujarat Panchayats Act,1993, on the ground that all these provisions violate Articles 14, 15, 19 and 243-D of the Constitution. In this petition, a further relief is sought praying for setting aside the order made by the Collector notifying the number of seats that were to be kept reserved for the Scheduled Castes and Scheduled Tribes, Socially and Economically backward classes etc. and for the office of Sarpanch, issued under the provisions of Sections 9 and 51 of the Act of 1993. It has been stated on behalf of the State Election Commission that the elections have already taken place.

#. The contentions that have been raised before us centre around the following constitutional and statutory provisions :

A.Constitutional Provisions :

"243.C.Composition of Panchayats,-(1) Subject to the provisions of this Part, the Legislature of a State may, by law, make provisions with respect to the composition of Panchayats :

Provided that the ratio between the population of the territorial area of a Panchayat at any level and the number of seats in such Panchayat to be filled by election shall, so far as practicable, be the same throughout the State.

(2) All the seats in a Panchayat shall be filled by persons chosen by direct election from territorial constituencies in the Panchayat area and for this purpose, each Panchayat area shall be divided into territorial constituencies in such manner that the ratio between the population of each constituency and the number

of seats allotted to it shall, so far as practicable, be the same throughout the Panchayat area.

(3) The Legislature of a State may, by law, provide for the representation -

(a) of the Chairpersons of the Panchayats at the village level, in the Panchayats at the intermediate level or, in the case of a State not having Panchayats at the intermediate level, in the Panchayats at the district level;

xxx xxx xxx xxx

"243-D. Reservation of seats.- (1) Seats shall be reserved for -

(a) the Scheduled Castes; and

(b) the Scheduled Tribes,

in every Panchayat and the number of seats so reserved shall bear, as nearly, as may be, the same proportion to the total number of seats to be filled by direct election in that Panchayat as the population of the Scheduled Castes in that Panchayat area or of the Scheduled Tribes in that Panchayat area bears to the total population of that area and such seats may be allotted by rotation to different constituencies in a Panchayat."

xxxx xxxx xxxx xxxx

"(4) The offices of the Chairpersons in the Panchayats at the village or any other level shall be reserved for the Scheduled Castes, the Scheduled Tribes and women in such manner as the Legislature of a State may, by law, provide :

Provided that the number of offices of Chairpersons reserved for the Scheduled Castes and the Scheduled Tribes in the Panchayats at each level in any State shall bear, as nearly as may be, the same proportion to the total number of such offices in the Panchayats at each level as the population of the Scheduled Castes in the State or of the Scheduled Tribes in the State bears to the total population of the State :

Provided further that not less than one-third of the total number of offices of Chairpersons in

the Panchayats at each level shall be reserved for women :

Provided also that the number of offices reserved under this clause shall be allotted by rotation to different Panchayats at each level.

(5) The reservation of seats under clauses (1) and (2) and the reservation of office of Chairpersons (other than the reservation for women) under clause (4) shall cease to have effect on the expiration of the period specified in Article 334.

(6) Nothing in this Part shall prevent the Legislature of a State from making any provision for reservation of seats in any Panchayat or offices of Chairpersons in the Panchayats at any level in favour of backward class of citizens."

xxxx xxxx xxxx xxxx

"243-K.Elections of the Panchayats. -

xxxx xxxx xxxx xxxx

(4) Subject to the provisions of this Constitution, the Legislature of a State may, by law, make provision with respect to all matters relating to, or in connection with, elections to the Panchayats."

xxxx xxxx xxxx xxxx

"243-M. Part not to apply to certain areas. (1) Nothing in this Part shall apply to the Scheduled Areas referred to in clause (1), and the tribal areas referred to in clause (2), of Article 244.

xxxx xxxx xxxx xxxx

"(4) Notwithstanding anything in this Constitution, -

(a) the Legislature of a State referred to in sub-clause (a) of clause (2) may, by law, extend this Part to that State, except the areas, if any, referred to in clause (1), if the Legislative Assembly of that State passes a resolution to that effect by a majority of the total membership of that House and by a majority

of not less than two-thirds of the members of that House present and voting;

(b) Parliament may, by law, extend the provisions of this Part to the Scheduled Areas and the tribal areas referred to in clause (1) subject to such exceptions and modifications as may be specified in such law."

xxxx xxxx xxxx xxxx

"243-O. Bar to interference by courts in electoral matters.- Notwithstanding anything in this Constitution, -

(a) the validity of any law relating to the delimitation of constituencies or the allotment of seats to such constituencies made or purporting to be made under Article 243-K, shall not be called in question in any court;

(b) no election to any Panchayat shall be called in question except by an election petition presented to such authority and in such manner as is provided for by or under any law made by the Legislature of a State".

xxxx xxxx xxxx xxxx

"244. Administration of Scheduled Areas and Tribal Areas. - (1) The provisions of the Fifth Schedule shall apply to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than [the States of Assam] [Meghalaya, Tripura and Mizoram]".

xxxx xxxx xxxx xxxx

"245. Extent of laws made by Parliament and by the Legislatures of States. - (1) Subject to the provisions of this Constitution, Parliament may make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State.

(2) No law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation."

Fifth Schedule.

xxxx xxxx xxxx xxxx

"2.Executive power of a State in Scheduled Areas : Subject to the provisions of this Schedule, the executive power of a State extends to the Scheduled Areas therein."

xxxx xxxx xxxx xxxx

"5. Law applicable to Scheduled Areas. - (1) Notwithstanding anything in this Constitution, the Governor may by public notification direct that any particular Act of Parliament or of the Legislature of the State shall not apply to a Scheduled Area or any part thereof in the State or shall apply to a Scheduled Area or any part thereof in the State subject to such exceptions and modifications as he may specify in the notification and any direction given under this sub-paragraph may be given so as to have retrospective effect.

(2) The Governor may make regulations for the peace and good government of any area in a State which is for the time being a Scheduled Area. In particular and without prejudice to the generality of the foregoing power, such regulations may -

(a) prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such area;

(b) regulate the allotment of land to members of the Scheduled Tribes in such area;

(c) regulate the carrying on of business as money-lender by persons who lend money to members of the Scheduled Tribes in such area.

(3) In making any such regulation as is referred to in sub-paragraph (2) of this paragraph, the Governor, may repeal or amend any Act of Parliament or of the Legislature of the State or any existing law which is for the time being applicable to the area in question.

(4) All regulations made under this paragraph shall be submitted forthwith to the President

and, until assented to by him, shall have no effect.

(5) No regulation shall be made under this paragraph unless the Governor making the regulation has, in the case where there is a Tribes Advisory Council for the State, consulted such Council."

"6. Scheduled Areas. - (1) In this Constitution, the expression 'Scheduled Areas' means such areas as the President may by order declare to be Scheduled Areas"

xxxx xxxx xxxx xxxx

"7. Amendment of the Schedule. - (1) Parliament may from time to time by law amend by way of addition, variation or repeal any of the provisions of this Schedule and, when the Schedule is so amended, any reference to this Schedule in this Constitution shall be construed as a reference to such Schedule as so amended.

(2) No such law as is mentioned in sub-paragraph (1) of this paragraph shall be deemed to be an amendment of this Constitution for the purposes of Article 368."

B.Provisions of the Panchayats (Extension of the Scheduled Areas) Act,1996.

"3.Extension of Part IX of the Constitution.- The provisions of Part IX of the Constitution relating to Panchayats are hereby extended to the Scheduled Areas subject to such exceptions and modifications as are provided in Sec.4."

"4.Exceptions and modifications to Part IX of the Constitution. - Notwithstanding anything contained under Part IX of the Constitution, the Legislature of a State shall not make any law under that Part which is inconsistent with any of the following features, namely :-

xxxx xxxx xxxx xxxx

(g) the reservation of seats in the Scheduled

Areas at every Panchayat shall be in proportion to the population of the communities in the Panchayat for whom reservation is sought to be given under Part IX of the Constitution.

Provided that the reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats.

Provided further that all seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes."

xxxx xxxx xxxx xxxx

Gujarat Panchayats (Amendment) Act,1998.

"2.In the Gujarat Panchayats Act,1993, (hereinafter referred to as 'the Principal Act'), after Section 278, the following sections shall be inserted, namely, -

278A. This Act shall apply to the Scheduled Areas of the State as referred to in clause (1) of article 244 of the Constitution of India, subject to the modifications specified in Schedule IV.

278AA. The enactments specified in Schedule V shall, in their application to the Scheduled Areas of the State as referred to in clause (1) of article 244 of the Constitution of India, be amended to the extent specified in column 3 of the said Schedule."

xxx xxxx xxx xxxx

"4. In section 9, in sub-section (5), in clause (a), after sub-clause (i) the following sub-clause shall be inserted, namely :-

(ia). In the case of a village panchayat, the whole local area of which comprises of any of the Scheduled Areas, the number of seats reserved for the Scheduled Tribes under sub-clause (i) shall be increased to such number as is not less than one-half of the total number of seats in the village panchayat."

xxxx xxxx xxxx xxxx

"8.In section 51, in sub-section (2),-

(1) for clause (a), the following shall be substituted, namely :-

(a) All offices of sarpanch of village panchayats in the State shall be reserved by the State Government for the Scheduled Tribes."

#. The learned Senior Counsel for the petitioners, in context of the aforesaid provisions, submitted that by the enactment of the said Act by which the provisions of part IX of the Constitution were extended to the Scheduled Areas the Parliament has impinged upon the legislative sphere exclusively conferred on the State Legislature by virtue of entry no.5 of the State List in Schedule VII of the Constitution of India read with Article 246 thereof. He submitted that under the said entry, State Legislature alone was empowered to make laws with respect to Local Government, that is to say, constitution and powers of municipal corporations etc. and other local authorities for the purpose of local self - government or village administration. He submitted that in this view of the matter, the Parliament cannot make any such law under the guise of extending the provisions of part IX, as may be modified by it, to the Scheduled Areas which fell within the territory of a State. It was contended that the impugned provisions of the said Act were not just modifications or exceptions in Part IX but were totally different and unwarranted by Article 243-M(4)(b). It was also submitted that any such enactment of the Parliament would not be an amendment to the Constitution, as mentioned in sub-clause (4)(b) of Article 243-M of the Constitution, and must therefore be tested like any other ordinary law. It was therefore argued that the entire exercise of enacting the said Act was abortive due to want of legislative competence on the part of the Parliament. It was submitted that the Court was not debarred from considering this aspect of want of legislative competence by the provisions of Article 243-O which imposes a bar to interference by Courts in electoral matters.

#. These contentions have been adopted and re-inforced by the learned Counsel who appeared in Special Civil Application No.3331 of 1999. He relied on

the decision of this Court in S.J.Jhala Vs. Chief Electoral Officer, reported in A.I.R.1969 Guj. 292, in which it was held that the delimitation of constituencies or preparation, revision or amendment of the electoral roll is not a stage in the process of any particular election but is an anterior stage. He also relied upon the decision of the Supreme Court in Indra Sawhney Vs. Union of India, reported in A.I.R.1993 SC 477, in support of his contention that the reservation should not exceed 50% of the total seats available and submitted that the reservation which is impugned would virtually leave no seat for the general category. It was submitted that the ratio of this decision given in context of Article 16(4) of the Constitution should be extended even to reservation of seats to the Panchayats. He also placed reliance on the decision in Dr.Chakradhar Paswan Vs. State of Bihar, reported in A.I.R. 1988 SC 959, in support of the same contention. The question of reservation in service which has been viewed in context of the provisions of Art.16(4) of the Constitution would, however, in our opinion stand altogether on different footing than the question of providing reservation of seats for the purpose of election to Panchayats, having regard to the special provisions made under the Constitution regarding the Scheduled Areas and Scheduled Tribes.

#. Part IX of the Constitution of India does not apply to the Scheduled Areas referred to in clause (1) and Tribal Areas referred to in clause (2) of Article 244 of the Constitution as laid down in Article 243-M.(1). However, under Article 243-M(4)(b), the Parliament is empowered to extend the provisions of Part IX to such Scheduled Areas and Tribal Areas referred to in clause (1) of Article 244, "subject to such exceptions and modifications" as may be specified in such law. Ordinarily, enacting exceptions or modifications in the constitutional provisions of part IX would have entailed following of the procedure laid down under Article 368(2) of the Constitution which is applicable when the Parliament exercises its constituent power to amend by way of addition, variation or repeal, any provision of the Constitution. However, when the Parliament by law made under Article 243-M.(4)(b) specifies therein any exception or modification in respect of any provisions of part IX of the Constitution while extending it to the Scheduled Areas, involving thereby amendment of the constitutional provisions of part IX for the purpose of extending them to the Scheduled Areas, the procedure involved for an amendment is not required to be followed.

Though the requirement of following the said amendment procedure is relaxed in respect of such amendment, the exceptions and/or modifications made in part IX of the Constitution while extending it to the Scheduled Areas none the less remain an amendment in the said Constitutional provisions to the extent they are applied in a modified form to the Scheduled Areas, even if it is not to be treated as an exercise of the plenary power of the Parliament to amend the constitution under Article 368(1) which could be done only by following the procedure prescribed under Article 368(2). Therefore, any challenge against the law enacted under Article 243-M(4)(b) will be viewed by the same parameters by which any constitutional amendment is subjected to a judicial review. An amendment to the Constitution will have the same efficacy as the Constitution itself, when the amendment is enacted within the power of amendment conferred by the constitution. The fact that it is specifically provided in Article 243-M.(4)(b) that no such law specifying exceptions and modifications in the provisions of part IX to the Scheduled Areas shall be deemed to be an amendment of the constitution for the purpose of Article 368 itself shows that only the procedural requirement of Article 368(2) is dispensed with and for all other purposes it would amount to varying the provisions of part IX as authorised by Article 243-M.(4)(b). If that be so, then the challenge against the provisions of the said Act on the ground of lack of legislative competence of the Parliament crumbles down for two good reasons. One, that the power to enact such law is specifically conferred by Article 243-M.(4)(b) on the Parliament "Notwithstanding anything in the constitution" as stated in the opening words and two, that the legislative competence of a State to make laws in respect of the areas forming part of the State territory is specifically made "Subject to the provisions of the constitution" as stated in the opening words of Article 245(1) of the Constitution, which deals with the extent of laws that may be made by Parliament and by the legislature of the States. The question of legislative competence in respect of the territorial area in respect of which laws can be made is distinct from the question of the legislative competence with respect to the matters for which such laws can be made by the competent legislature. Article 243-M of the Constitution deals with the areas to which the applicability of the provisions of part IX is excluded. When any part of the territory of a State is required to be separately dealt with as warranted by Article 243-M.(4) because it is a Scheduled Area, then for that territorial area of the State, the power of the State legislature to make laws

will stand excluded on a combined reading of Article 243-M.(4)(b) and Article 245(1) of the Constitution. In other words, since the Parliament is specifically empowered by Article 243-(M)(4)(b) to make laws with respect to the Panchayats while extending part IX to the Scheduled Areas then, notwithstanding the provision in the Constitution enabling State Legislature to make laws in respect of its territory under Article 245(1) of the constitution, the power thus specifically conferred on the Parliament shall prevail, and therefore, the question of the power of the State Legislature to enact laws under entry 5 of the State List with respect to Panchayats cannot arise, when the power to make laws in respect of a portion of the State territory viz. the Scheduled Areas is thus taken away and specifically conferred on the Parliament. Therefore, in our opinion, since the Constitution specifically endows the Parliament to make laws, in respect of the Scheduled Areas, of the nature covered by Article 243-M(4)(b) notwithstanding anything in the Constitution, the State legislature will have no power to make laws of that nature in respect of such Scheduled Areas. In any event, it would not be within province of the State Legislature to make any law of the nature envisaged by Article 243-M.(4)(b), since, such power of amending the Constitutional provisions of Part IX while extending them to the Scheduled Area is specifically conferred on the Parliament and cannot be whittled down by reference to any legislative power conferred on the State Legislature by any entry in List II of the Seventh Schedule.

#. It was then argued that even if there was legislative competence with the Parliament to enact the said Act, provisions of the said Act could be subjected to judicial review because the law relating to reservation of seats was not a law relating to delimitation of constituencies or the allotment of seats to such constituencies. The submission was, that, the law relating to allotment of seats to the constituencies had something to do with the composition of the Panchayat and not the manner in which the seats allotted are required to be filled in and that the question of reservation of the seats will have a bearing on the manner of filling up the seats rather than the composition of the Panchayat. It was submitted that the bar to interference by Courts in electoral matters was confined to considering validity of any law relating to the delimitation of constituencies or allotment of seats to such constituencies made or purporting to be made under Article 243-K which in clause (4) thereof referred to the law made by the Legislature of State making

provision with respect to all matters relating to, or in connection with, elections to the Panchayats. It was submitted that the matter regarding allotment of seats to the constituencies was not a matter relating to or in connection with election to the Panchayats. It was argued that under Article 243-C of the Constitution allocation of seats has something to do with the composition of the Panchayats, while the question of reservation of seats was altogether a different issue and it had nothing to do with the question of allotment of seats. It was, therefore, contended that the validity of section 4(g) should be tested in context of the provision of Articles 243-D(1) & (4) of the Constitution and such a process was not barred by the provision of Article 243-O thereof.

#. By Article 243-D.(1) seats are required to be reserved for the Scheduled Castes and the Scheduled Tribes in every Panchayat. For the purpose of earmarking seats to the reserved categories, total number of seats which are required to be filled by persons chosen by direct election in the Panchayat is required to be kept in mind. The distribution of seats to the reserved categories is made dependent upon the population of the respective category in the Panchayat area and its ratio with the total population of that area. Therefore, the seats which are required to be reserved for the respective reserved category out of the total number of seats would depend upon the strength of the population of such reserved categories. In other words, there was no provision in Article 243-D.(1) giving any special treatment to the Scheduled Tribes on the question of allotment of seats to the reserved categories and it all depended upon the population of persons belonging to Scheduled Tribes in the Panchayat area vis-a-vis other population including that of the Scheduled Castes and the total number of seats available for distribution. The first proviso to clause (g) of Section 4 of the Said Act now assures reservation of at least one-half of the total number of seats for the category of the Scheduled Tribes. It is submitted that such a reservation has the effect of taking away the nexus of the strength of population which was the basis for allotment of seats for various reserved categories and therefore, this proviso contravenes the provision of Article 243-D.(1) under which such blanket allotment of one-half of the total number of seats could not have been made without reference to the population of the Scheduled Tribes found in the Panchayat area. There would be much substance in this contention, if the Parliament had not been empowered, as is done by Article 243-M.(4)(b), to extend the provisions of Part IX which

includes Article 243-D with such exceptions and modifications as may be specified in the law extending the provisions. The proviso to clause (g) of Section 4 of the Said Act is clearly intended to make a special provision of assuring not less than one-half of the total number of seats to the Scheduled Tribes which are in the Scheduled Areas to which the provisions of part IX are extended. The Parliament clearly has legislative competence to make such variations under sub-clause (b) of clause (4) of Article 243-M of the Constitution.

7.1 Exercise of such power to make a special provision in respect of the Scheduled Tribes is also in consonance with the Constitutional scheme reflected from the provisions of Article 244(1) read with the Fifth Schedule which is made applicable to the administration and control of the Scheduled Areas and Scheduled Tribes in any State other than the States of Assam, Meghalay, Tripura and Mizoram for which separate provisions are made in the Sixth Schedule under Article 244(2) of the Constitution. The administration and control of the Scheduled Areas is not confined only to exercise of mere executive power. The question as to the law that may or may not be made applicable to a Scheduled Area is also a matter relating to administration and control of the Scheduled Areas and as provided by para 5 of the Fifth Schedule even though the Acts of Parliament or the Legislature of the State may apply to the Scheduled Area of their own force, the Governor has the power to exclude their operation by public notification and the words subject to "exception and modification" occurring in para 5(1) clearly confer on the Governor a power even to amend those provisions in their application to the Scheduled Area. The Governor, therefore, would be competent to change whole aspect of the Act or section referred to in the notification. The wide powers of the Governor in context of Sixth Schedule came to be considered in Edwingson Barch Vs. State of Assam, reported in AIR 1966 SC 1220, by Hon'ble the Supreme Court and it was held that a part of the wide power of the Parliament under Paragraph 21 of the Sixth Schedule had been conferred on the Governor, because, the Constitution makers apparently thought that Parliament need not be called upon to exercise its own power for bringing about comparatively smaller and minor changes.

7.2. The concept of special provisions for the Scheduled Areas involved consideration of the interest of Scheduled Tribes which is evident from the various provisions made in the Fifth Schedule. The governance of the Scheduled Areas is to be done keeping in view the

welfare and advancement of the Scheduled Tribes and the Governor is empowered to make regulations for the peace and good Government in respect of any area in a State which is a Scheduled Area, particularly, as regards transfer or allotment of land, or money lending business, in the transactions where members of Scheduled Tribes are involved. Even the Scheduled Tribes Advisory Council which is to be established under Paragraph 4 in States having Scheduled Areas is required to have, as nearly as may be, 3/4th of the members who are representatives of the Scheduled Tribes in the Legislative Assembly of the State. As stated in the Constituent Assembly Debates (VII) Appendices "C" & "D" (PP. 101 to 109,157) the reasons why special provisions have been made for the Scheduled Areas and the Scheduled Tribes are that they are culturally backward, and that their social and other customs are different from the rest of India. Therefore, while extending the provision of Part IX of the Constitution to the Scheduled Areas, for which the Constitution envisages special provisions having regard to the interest of Scheduled Tribes involved, if there is assured a reservation of not less than 50% of the total seats for the Scheduled Tribes for election to the Panchayats in the Scheduled Areas, as is done under the impugned proviso of Section 4(g) of the Said Act, it cannot be said that such a provision is unjust, unreasonable, arbitrary or unconstitutional. On the contrary, it is a just and appropriate provision which is in consonance with the Constitutional scheme for the amelioration of the Scheduled Tribes of the Scheduled Areas. For the same reasons, the provison which lays down that all the seats of Chairpersons of Panchayats at all levels shall be reserved for the Scheduled Tribes in the Scheduled Areas under the Second Proviso to clause (g) of Section 4 of the Said Act stands justified especially when it is now provided that reservation for the Scheduled Tribes shall not be less than one-half of the total number of seats. As observed by Federal Court in Jatindra Nath Gupta Vs. Province of Bihar reported in AIR 1949 Federal Court Pg.175, the arrangement which "excludes" those areas from the purview of normal legislation, had its origin, as is well known, in the consideration that the people inhabiting those areas were not, on account of their primitive or backward condition, fully capable yet of safeguarding their welfare by joint political action in the legislatures of the country, and might otherwise suffer neglect or oppression. The Governor is thus made the sole judge as to whether an Act of the Provincial Legislature is suitable for application to those areas, having regard to their peculiar needs and local conditions which greatly vary from those prevailing

in the rest of the Province. In this view of the matter, we are unable to accept the challenge against the impugned provisions of the Said Act and the consequential provisions in the impugned State Act amending the Gujarat Panchayats Act,1993 on the ground that they are violative of Article 14 or 243-D of the Constitution.

#. It was contended by the learned Counsel for the petitioners that the declaration of Scheduled Areas which was made by President was itself by now obsolete in as much as a constant review was anticipated by the provisions of the Fifth Schedule, particularly, by clause 7, which deals with "Amendment of the Schedule" as also clause 6, which empowered the President to declare the Scheduled Areas as well as to direct that the whole or any specified part of a Scheduled Area shall cease to be Scheduled Area and also to alter, by way of rectification of boundaries, any Scheduled Area. It was submitted that there is nothing brought on record to indicate that any such review exercise was undertaken after the initial Order declaring the areas as the Scheduled Areas was made by the President on 31.12.1977. The President of India, in exercise of the powers conferred on him by para 6(2) of the Fifth Schedule to the Constitution of India, while rescinding the earlier order of 1950 in so far as it related to certain areas which included Gujarat, made the said Order redefining the areas specified therein to be the Scheduled Areas. Issuance of an order declaring areas to be Scheduled Areas or redefining or altering such areas as is empowered by Paragraph 6 of the Fifth Schedule is a matter which is virtually connected with the legislative function of making special provisions with respect to the Scheduled Areas, and the question whether any declaration is required to be made under pragraph 6(1) or whether any alteration required in context of Scheduled Area already notified falls entirely within the domain of Presidential powers. The exercise of such power would depend on several factors which though not specifically laid down can be discerned from the object for which the Scheduled Areas are separately treated viz.for safeguarding the interest of the Scheduled Tribes. The power conferred on the President is therefore not unbriddled.

##. Barring certain vague statements in the petition that the population of Scheduled Tribes does not warrant higher reservation of seats for them in the Scheduled Areas in question and about the percentage of population of other classes, there is nothing on record which would justify any inquiry into the factual aspect of the matter having bearing on the aspect of continuing these areas as

Scheduled Areas. Moreover, the subject verges on the legislative domain of application of the relevant laws to the Scheduled Areas and Tribes under the Constitutional scheme of distribution of powers. When a high Constitutional authority of the stature of the President is entrusted with such powers, presumption would be that they are exercised in tune with the letter and spirit of the Constitution. It would therefore, be entirely be for the President, in exercise of such powers, to determine as to whether any variation of the Scheduled Areas is called for or whether he should or should not exercise his power under paragraph 6 of the Fifth Schedule. It would not be appropriate for the Courts to give direction to the President as to the manner in which he should exercise his power for the purpose of declaring Scheduled Areas or making any Orders, in respect of the Scheduled Areas already declared, which may fall within the ambit of Paragraph 6 of Fifth Schedule. In this view of the matter, we are unable to accept the contention that there is no justification for continuing the said areas declared as Scheduled Areas under the notification dated 31.12.1997 publishing the Scheduled Areas (States of Bihar, Gujarat, Madhya Pradesh and Orissa) Order,1977.

##. The learned Addl.Advocate General submitted that the jurisdiction of the Court was barred by Article 243-O of the Constitution. He placed reliance on Anugrah Narain Singh Vs. State of U.P., reported in (1996) 6 SCC 303, in which it was held by the Supreme Court in context of Article 243-ZG of the Constitution (Similar to Art.243-O), that Article 243-ZG was a complete and absolute bar in considering any matter relating to municipal election on any ground whatsoever after the publication of the notification for holding municipal election and that the bar imposed was twofold viz. that the validity of laws relating to delimitation and allotment of seats made under Article 243-ZA cannot be questioned in any Court, and that no election to a municipality can be questioned except by way of an election petition. It was held that the provisions of sections 7, 32 of the U.P.Nagar Mahapalika Adhiniyam 1959 which were similar to the provisions of Sections 9 and 16 of the Gujarat Panchayats Act, falls within expression "any law relating to the delimitation of the constituencies or allotment of seats to such constituencies" under Article 243-ZG and therefore, its validity was not open to challenge because of the protection given by Article 243-ZG of the Constitution. Applying the ratio of the said decision of the Supreme Court to the present case, we are of the opinon that the

jurisdiction of the Court is barred under the provisions of Article 243-O, since the petitioners have challenged the validity of the provisions of law relating to the allotment of seats to the Constituencies made under Article 243-K(4) of the Constitution with respect to the matters relating to or in connection with election to the Panchayats.

##. In the above view of the matter, all the contentions raised on behalf of the petitioners must fail. All these petitions are therefore rejected. Rule is discharged in each of them with no order as to costs.

##. At this stage, learned Counsel for the petitioner makes an oral application that the case involves substantial question of law as to the interpretation of the Constitution, and therefore, this Court may certify under Article 134-A of the Constitution to that effect. We are of the view that there is no substantial question of law involved in the case, as the matter has been decided on a plain and obvious reading of the Constitutional provisions. This matter therefore does not qualify for issuance of such certificate.

Sd/- Sd/-
20.10.2000. (R.K.Abichandani, J) (D.A.Mehta, J)

m.m.bhatt